

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT
OF NEW YORK

RECEIVED

2016 NOV 3 10 31
U S DISTRICT COURT SDNY

Kelly Price

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

15-CV-05871

NOTICE OF APPEAL

DETECTIVE LINDA SIMMONS Individually,
and as an employee of the New York City Police
Department, ADA MARIA STROHBEHN and
ADA KENYA WELLS Individually,
and as employees of the New York County
District Attorney's Office, THE CITY OF NEW YORK,
Deputy DA Audrey Moore, ADA Larry Newman, ADA
Laura Higgins nee Richendorfer, DA Cyrus Vance Jr.,
as employees of the New York County District
Attorney's Office, Inspector Obe of the New York City
Police Department, in her capacity as an employee
of the New York City Police Department,
Rose Pierre-Louis in her capacity as the Former
Commissioner of Domestic Violence of the
City of New York, PO Matthew Winters, individually
And in his capacity as an employee of the New York City
Police Department, Jane and/or John Doe Operator
of Twitter account @NYPD28pct, Jane and/or John Doe Operator
of Twitter account @NYCagainstAbuset, Jane and/or John Doe Operator
of Twitter account @RPLNYC,

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: Kelly Price (list the names of
all parties who are filing an appeal)

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SDNY PRO SE OFFICE
2016 NOV -3 AM 9:46

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: Nov. 2, 2016

in the above-named case appeal to the United States Court of Appeals for the Second Circuit from the "judgment ~~X~~ order entered on: October 3, 2016 (date that judgment or order was entered on docket)

that:

- 1. Hon Judge Polk-Failla's order dated October 3, 2016 discusses the incorrect pleading document. I had received permission to file an amended complaint on or around September 15, 2016 and instead a version of my pleadings turned in before I knew the extension was granted was worked on by Hon Judge Polk-Failla. I request that the complaint filed on 9/16/2016 be considered as the operative pleading/ document the case will proceed with and that the Appeals Court assert the complaint filed on or about September 1, 2016 no longer be the operative pleading/document the case will proceed with. I have already filed a Notice of Appeal in an attempt to cure this clerical error.
- 2. The order dated October 3, 2016 by Hon Judge Polk-Failla strikes from my complaint actions I allege resulted from wrongful arrest, malicious prosecutions, various Section 1983 Civil Rights infringements and other constitutional violations arising from arrests and malicious criminal proceedings that were dismissed and sealed by Hon. Judge Tandra Dawson of NY Supreme Court on or about July 25, 2012 as untimely and beyond the statute of limitations. As my original filing was on July 24, 2015, three years to the day after the charges were dismissed against me, these actions were filed appropriately within the statute of limitations and should not be stricken from my complaint. Hon. Judge Preska only struck actions against the city and individuals named in my Second Amended Complaint that occurred BEFORE July 25, 2012 when criminal prosecutions against me for Felony Contempt of Court an 324 Counts of Aggravated Harassment under the now defunct section of the NY State Penal Code (NYS 230.40(1)) were dismissed and sealed by NY State Supreme Court. Following, all actions stemming from dismissal of charges on or about July 25, 2012 are still valid and not untimely and the relative defendants named in my caption and in my complaint should not be struck as per Hon. Judge Polk-Failla's order.
- 3. Federal Rules of procedure allow a Federal Judge to consider the exhibits attached to a Pro Se complaint if the articulation of actions by the complainant is insufficient. I have attached exhibits that prove that a long pattern of conspiracy and state created danger has felled my life as a result of these willful and malicious actions undertaken by members of the NYPD and Manhattan District Attorney's office. In particular the affidavit I procured on December 15, 2015 by former NYPD Lt. Mark C Larocca states clearly that the MDAO instructed the NYPD to not assist me, to deny taking any complaints that I

needed to file, and to essentially deny me all NYPD protections. My exhibits clearly illustrate this pattern and the court has room to consider these exhibits in lieu of striking actions from my complaint.

- 4. I have just learned about Conspiracy and State Created Danger Torts as of August, 2016 after Hon. Judge Preska graciously and kindly suggested in her 7/26/2016 order that I examine Dwares and similar state created danger cases in the 2nd Circuit. The tolling on all Section 1983 claims begins when the defendant learned of the damages enacted on them. All parties related to the conspiracy to create danger for me should not be struck from my complaint as the statute of limitations began to toll at earliest on December 15, 2015 when I received Lt. LaRocca's affidavit stating that the Manhattan District Attorney's office instructed the NYPD to not provide me with police services, protections, to take my complaints or to investigate them or tolling begins at latest in August of 2016 when I learned of the Dwares case when reading Hon. Judge Preska's order dated 7/26/16.
- 5. As I have repeatedly asked the the Mayor's office to combat DV, Former Commissioner of Domestic Violence Rose Pierre Louis, and Inspector Obe of the 28th Precinct to remove me from their twitter block list I have given them adequate notice of the constitutional harm. I have attached as exhibit to my filings to the Federal Court the 311 reports I made to the City of New York complaining about both Inspector Obe, the Commanding Officer of the 28th precinct, and the former Commissioner of Domestic Violence's illegal and unconstitutional blocking of my twitter account from reading or responding to those respective twitter feeds. Both defendants, Rose Pierre-Louis, former Commissioner of the Mayor's Office to Combat Domestic Violence, and NYPD Inspector OBE were informed of the violation vis a vis the 311 complaint on or about the Spring of 2015. Both the former and the latter have failed to remedy the wrong. I am to this day still blocked on all three twitter accounts. Additionally, after I was blocked I tweeted to all three accounts complaining of my blocking and both defendants still to the date of this filing have exhibited deliberate indifference to my rights by failing to act on information indicating that unconstitutional acts were occurring. Additionally I informed the NEW Commissioner for the Mayor's Office to Combat Domestic Violence orally at a panel discussion held at Reverend Que English's Bronx Christian Fellowship Church on East Gunhill road in May of 2016 that I was still blocked by her office. This proceeding was video-taped and witnessed by dozens of members of the Mayor's Clergy Round-table. Still to date the unconstitutional blocking has continued. I also penned a letter directly to the Mayor's Office to Combat Domestic Violence complaining about this illegal twitter blocking. Accordingly, Insp. Obe and Rose Pierre-Louis should not be struck from my caption and action as individuals in light of this information.
- 6. For actions related to my unlawful arrest by P.O. Matthew Winters on 9/27/2011 the tolling began when appeal was won which was on or about February 23, 2016. I filed a

notice of claim within the appropriate three months and have filed my federal lawsuit within the statute of limitations. I don't understand why these actions are struck from my complaint nor why P.O. Winters, Relf, Maladano et al were excised off my complaint as per Hon. Judge Polk-Failla's order. I am unable to bring action until the proceedings terminated in my favor: which was on or about February 23, 2016. Additionally all three officers participated in creating state danger against me and should remain on the complaint as part of this conspiracy. I had no reason to know of my injuries until I won the appeal of conviction. I am a layperson and not a lawyer. I did not know if I was guilty of disorderly conduct until the NYS appellate panel affirmed my suspicions. I did not know it was illegal to say "fuck you" to a police officer, I did not know it was illegal to cry and protest lack of police action. How would I know? I had never studied the NY State penal code nor had I read the NYPD handbook until the summer of 2015.

(If the appeal is from an order, provide a brief description above of the decision in the order.)

The order published by Hon. Judge Polk-Failla struck many of my actions against individuals from my complaint on the basis(es) of statute of limitations and facial insufficiency. I ask the Appellant panel to reconsider if the version of my complaint worked on was the appropriate one as I filed a further complaint after the one considered that I had permission to file. Because of a clerical error the incorrect complaint was passed to the newly assigned judge presiding over my case. I have entered a separate appeal of that order and now discuss the orders given to me in consideration of the incorrect complaint being used as the working document. Each of those orders is considered here and I request that the Appellant panel reverse Hon. Judge Polk-Failla's orders commanding me to strike certain individuals and actions from my complaint.

November 2, 2016

Dated

Signature •

Price, Kelly

□Name (Last, First, MI)□

Address: 534 W 187th st #7, City: New York State: NY Zip Code: 10033

646 676 1940

graciegracie212@gmail.com

Telephone Number

□E-mail Address (if available)

• Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary. Rev. 12/23/13

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT
OF NEW YORK

Kelly Price

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

15-CV-05871

MOTION TO PROCEED IN

FORMA PAUPERIS ON APPEAL

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and as an employee of the New York City Police
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ADA KENYA WELLS Individually,
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Deputy DA Audrey Moore, ADA Larry Newman, ADA
Laura Higgins nee Richendorfer, DA Cyrus Vance Jr.,
as employees of the New York County District
Attorney's Office, Inspector Obe of the New York City
Police Department, in her capacity as an employee
of the New York City Police Department,
Rose Pierre-Louis in her capacity as the Former
Commissioner of Domestic Violence of the
City of New York, PO Matthew Winters, individually
And in his capacity as an employee of the New York City
Police Department, Jane and/or John Doe Operator
of Twitter account @NYPD28pct, Jane and/or John Doe Operator
of Twitter account @NYCagainstAbuset, Jane and/or John Doe Operator
of Twitter account @RPLNYC,

RECEIVED
2016 NOV -2 P 4 31
U.S. DISTRICT COURT SONY

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Federal Rule of Appellate Procedure 24(a)(1) ~~for leave to proceed in~~
forma pauperis on appeal. This motion is supported by the ~~attached~~ affidavit.

November 3, 2016
Dated ~~October 27, 2016~~

Price, Kelly

Name (Last, First, MI)

534 W 187th st #7 NY NY 10033

Address

Signature 

graciegracie212@gmail.com

E-mail Address (if available)

Rev. 12/23/13

646.676.1940

City Telephone Number

in the above-named case appeal to the United States Court of Appeals
for the Second Circuit from the "judgment ~~X order~~ entered on: October
3, 2016 (date that judgment or order was entered on docket)

That: The order published by Hon. Judge Polk-Failla on October 3, 2016 struck many of my
actions against individuals from my complaint on the basis(es) of ~~state of limitations~~ and facial
insufficiency. I ask the Appellant panel to reconsider if the version of my complaint worked on
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permission to file. Because of a clerical error the incorrect complaint was passed to the newly
assigned judge presiding over my case. I have entered a separate appeal of that order and now
discuss the orders given to me in consideration of the incorrect complaint being used as the
working document. Each of those orders is considered here and I request that the Appellant
panel reverse Hon. Judge Polk-Failla's orders commanding me to strike certain individuals and
actions from my complaint. In Summary the reasons I will ask for reversal of these orders as I
perfect my appeal are: 1. Hon Judge Polk-Failla's order dated October 3, 2016 discusses the

incorrect pleading document. I had received permission to file an amended complaint on or around September 15, 2016 and instead a version of my pleadings turned in before I knew the extension was granted was worked on by Hon Judge Polk-Failla. I request that the complaint filed on 9/16/2016 be considered as the operative pleading/ document the case will proceed with and that the Appeals Court assert the complaint filed on or about September 1, 2016 no longer be the operative pleading/document the case will proceed with. I have already filed a Notice of Appeal in an attempt to cure this clerical error.

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- 6. For actions related to my unlawful arrest by P.O. Matthew Winters and the inactions taken by P.O.s Relf and Maladano: on 9/27/2011 the tolling began when appeal was won which was on or about February 23, 2016. I filed a notice of claim within the appropriate three months and have filed my federal lawsuit within the statute of limitations. I don't understand why these actions are struck from my complaint nor why P.O. Winters, Relf, Maladano et al were excised off my complaint as per Hon. Judge Polk-Failla's order. I am unable to bring action until the proceedings terminated in my favor: which was on or about February 23, 2016. Additionally all three officers

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Key M 11/2/16

UNITED STATES DISTRICT COURT

for the
DISTRICT OF _____

Kelly Price,
Plaintiff

v.

Linda Simmons
City of New York et al
Defendant

Case No. 15-CV-05871

**AFFIDAVIT ACCOMPANYING MOTION
FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: Kelly Price

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: 11/2/16

My issues on appeal are: See attached pages

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property (such as rental income)	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$ 300	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$ 140 ⁰⁰	\$	\$	\$
Other (specify): Food Stamps HRA Housing assistance	\$ 405 ⁰⁰	\$	\$	\$
Total monthly income:	\$ 845 ⁰⁰	\$	\$	\$

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
Now NYC	150 W 28th St. 3rd Fl	5/16 - 8/16	\$ 0 ⁰⁰ / Apprentice
Urban Justice Center Mentor Health Project	40 Recta St. NYC NY 10014	10/15 - 5/16	\$ 300 / month
			\$

3. List your spouse's employment history for the past two years, **most recent employer first**.
(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
N/A		\$	\$
		\$	\$
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	Other real estate	Motor vehicle #1
(Value) \$	(Value) \$	(Value) \$
N/A		Make and year:
		Model:
		Registration #:

Motor vehicle #2	Other assets	Other assets
(Value) \$	(Value) \$	(Value) \$
Make and year:	N / A	
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
N / A	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name [or, if under 18, initials only]	Relationship	Age
N / A		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$800/mo	\$
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 0	\$
Home maintenance (repairs and upkeep)	\$ 0	\$
Food	\$400	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$ 50	\$
Medical and dental expenses	\$ 20	\$
Transportation (not including motor vehicle payments)	\$ 150	\$
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$ 0	\$
Life:	\$ 0	\$
Health:	\$ 0	\$
Motor vehicle:	\$ 0	\$
Other:	\$ 0	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$ 0	\$
Installment payments		
Motor Vehicle:	\$ 0	\$
Credit card (name):	\$ 0	\$
Department store (name):	\$ 0	\$
Other:	\$ 0	\$

Alimony, maintenance, and support paid to others	\$ 0	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$
Other (specify): Court Expenses	\$ 40	\$
Total monthly expenses:	\$	\$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☒ Yes ☐ No

If yes, describe on an attached sheet.

I will be applying for disability

10. Have you spent - or will you be spending - any money for expenses or attorney fees in connection with this lawsuit? ☒ Yes ☐ No

If yes, how much? \$

- Stationary, printing, etc approx 200 USD

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

12. State the city and state of your legal residence

New York, New York

Your daytime phone number:

646 670 1940

Your age: 45 Your years of schooling: 22

Last four digits of your social-security number:

0356

Provide a statement that identifies the relevant facts and makes a showing of likely merit as to each issue you intend to present on appeal. See Local Rule 24.1

See attached pages please

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENTDocket Number(s): 15-CV-05871

Caption [use short title]

Motion for: Appeal

Price
v.
Linda Simmons
City of New York,
et al

Set forth below precise, complete statement of relief sought:

reversal of orders
dated 10/3/16 instructing
me to delete individual
defendants & actions from
my caption & complaint.

MOVING PARTY: Kelly Price☒ Plaintiff☐ Defendant☐ Appellant/Petitioner☐ Appellee/Respondent

OPPOSING PARTY:

MOVING ATTORNEY:

OPPOSING ATTORNEY:

[name of attorney, with firm, address, phone number and e-mail]

Court-Judge/Agency appealed from:

Hon. Judge Polk-Railla

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☐ Unopposed ☐ Opposed ☒ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☐ No ☒ Don't Know**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:**

Has request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☐ Yes ☐ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:

Date:

11/2/16Service by: ☐ CM/ECF☒ Other [Attach proof of service]

RECEIVED
2016 NOV -2 P 9:31
U.S. DISTRICT COURT SDNY

CAPTION:

Wely fine

v.

CERTIFICATE OF SERVICE*

Docket Number: 15-CV 05871

Linda Simmons, City of New York Bt al

I, Kelly Price, hereby certify under penalty of perjury that
(print name)
on 11/2/16, I served a copy of Notice of Appeal,
(date)
request for poor person status, proof of service
(list all documents)

by (select all applicable)**

☐ Personal Delivery

☒ United States Mail

☐ Federal Express or other
Overnight Courier

☐ Commercial Carrier

☐ E-Mail (on consent)

on the following parties:

Zachary Carter, 100 church St., NY New York 10007
Name Address City State Zip Code

Name Address City State Zip Code

Name Address City State Zip Code

Name Address City State Zip Code

*A party must serve a copy of each paper on the other parties, or their counsel, to the appeal or proceeding. The Court will reject papers for filing if a certificate of service is not simultaneously filed.

**If different methods of service have been used on different parties, please complete a separate certificate of service for each party.

11/2/16

Today's Date

Kelly Price

Signature

ACKNOWLEDGMENT AND NOTICE OF APPEARANCE

Short Title: Pricer v. Linda Simmons City of NY et. A. Docket No.: 15-CV-05871

Lead Counsel of Record (name/firm) or Pro se Party (name): _____

Appearance for (party/designation): _____

DOCKET SHEET ACKNOWLEDGMENT/AMENDMENTS

Caption as indicated is:

- ☒ Correct
☐ Incorrect. See attached caption page with corrections.

Appellate Designation is:

- ☒ Correct
☐ Incorrect. The following parties do not wish to participate in this appeal:

Parties: _____

- ☐ Incorrect. Please change the following parties' designations:

Party _____ Correct Designation _____

Contact Information for Lead Counsel/Pro Se Party is:

- ☒ Correct
☐ Incorrect or Incomplete. As an e-filer, I have updated my contact information in the PACER "Manage My Account" screen.

Name: _____
 Firm: _____
 Address: _____
 Telephone: _____ Fax: _____
 Email: _____

RECEIVED
 2016 NOV 9 P 3:32
 U.S. DISTRICT COURT SDNY

RELATED CASES

- ☐ This case has not been before this Court previously.
☐ This case has been before this Court previously. The short title, docket number, and citation are: _____
☐ Matters related to this appeal or involving the same issue have been or presently are before this Court. The short titles, docket numbers, and citations are: _____

CERTIFICATION

I certify that ☐ I am admitted to practice in this Court and, if required by LR 46.1(a)(2), have renewed my admission on _____ OR that ☐ I applied for admission on _____ or renewal on _____. If the Court has not yet admitted me or approved my renewal, I have completed Addendum A.

Signature of Lead Counsel of Record: _____

Type or Print Name: _____

OR

Signature of pro se litigant: Kelly Price

Type or Print Name: Kelly Price

- ☒ I am a pro se litigant who is not an attorney.
☐ I am an incarcerated pro se litigant.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CAPTION:

Kelly Price

CERTIFICATE OF SERVICE*

Docket Number: 15-CV-05871Linda Simmons, City of
New York et. alI, Kelly Price, hereby certify under penalty of perjury that
(print name)on 11/2/16, I served a copy of Notice of Appeal at
10/3/16 order, Request for for Person Status
(date) (list all documents)

by (select all applicable)**

☐ Personal Delivery☒ United States Mail☐ Federal Express or other
Overnight Courier☐ Commercial Carrier☐ E-Mail (on consent)

on the following parties:

Zachary W Carter 100 Church St. NY NY 10007
Name Address City State Zip Code

Name Address City State Zip Code

Name Address City State Zip Code

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Today's Date

Kelly Price
Signature

CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
THE DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE
300 PEARL STREET - NEW YORK, NY 10007-1312

OFFICIAL BUSINESS

PRO SE INTAKE UNIT



POSTAGE

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ZIP 10007

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